

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
WESTERN DIVISION

In re:

Jacalyn S. Nosek
Debtor

Chapter 13
Case No.: 02-46025-JBR

Jacalyn S. Nosek
Plaintiff

Adv. Pro. No. 07-
Related Adv. Pro. No. 04-04517-JBR

v.
Ameriquet Mortgage Company
Defendant

Denise M. Pappalardo and
Carolyn A. Bankowski,
Trustee Defendants

Complaint

1. The Plaintiff Jacalyn S. Nosek, (“Nosek”) the Debtor in this pending chapter 13 case, is an individual who resides at 60 Bolton Road, S. Lancaster, MA 01561 (“the Property”).
2. The Defendant Ameriquet Mortgage Company (“Ameriquet”) has a mailing address of 1100 Town & Country Road, Suite 200, Orange, CA 92868. Upon information and belief, Ameriquet Mortgage Company is a wholly owned subsidiary of Ameriquet Capital Corporation, a privately held corporation.
3. The Trustee Defendant Denise M. Pappalardo is the Standing Chapter 13 Trustee for the Western Division of the United States Bankruptcy Court for the District of Massachu-

- setts, with a principal place of business located at 44 Front Street, Worcester, MA 01608.
4. The Trustee Defendant Carolyn A. Bankowski is the Standing Chapter 13 Trustee for the Eastern Division of the United States Bankruptcy Court for the District of Massachusetts, with a principal place of business located at 98 North Washington Street, Boston, MA 02114.
 5. On March 6, 2007, in Adv. Pro. No. 04-04517-JBR, the Bankruptcy Court issued its *Decision on Remand*, wherein it awarded \$250,000 in emotional distress damages to Ms. Nosek and punitive damages of \$500,000.00 under Section 105(a).
 6. On June 27, 2007, the U.S. District Court, in cases CA 07-40112-WGY and CA 07-40114-WGY, AFFIRMED this Court's *Decision on Remand*.
 7. As of this date, the Bankruptcy Court has not yet determined an award of Plaintiff's attorneys fees and costs, or the amount of pre-judgment interest, and no Execution has been issued.
 8. On July 19, 2007, Ameriquest Mortgage Company filed Notices of Appeal with the U.S. District Court in cases CA 07-40112-WGY and CA 07-40114-WGY.
 9. As of this date, the Plaintiff is without security for the judgment in the amount of \$750,000.00 which has been awarded by this Court, and AFFIRMED by the U.S. District Court.
 10. For the period through June 14, 2006, Plaintiff's counsel fees came to \$86,215.00, plus the costs of \$2,395.80, for the prosecution of this adversary proceeding against Ameriquest.

11. Counsel has separately tracked his time and costs incurred in matters devoted to the first appeal, the remand, and the second appeal by Ameriquest to the U.S. District Court. For the period June 15, 2006 through June 30, 2007, counsel's additional fees and costs total \$46,372.42.
12. Plaintiff is also entitled to the award of pre-judgment interest pursuant to 28 U.S.C. 1961. "The federal prejudgment interest rate applies to actions brought under federal statute, such as in bankruptcy proceedings." *Banks v. Gill Distribution Ctrs. Inc.*, 263 F.3d 862, 871 (9th Cir. 2001).
13. According to information published by the U.S. District Court for the District of Massachusetts, the appropriate rate of interest for the week preceding the entry of this Court's *Decision on Remand* (03/02/2007) is 4.96%.
14. Pursuant to 28 U.S.C. 1961:

"(b) Interest shall be computed daily to the date of payment except as provided in section 2516 (b) of this title and section 1304 (b) of title 31, and shall be compounded annually."
15. Prejudgment interest computed from December 2, 2004, the date the Adversary Complaint was filed upon the direction of this Court through July 23, 2007, is approximately \$98,044.94; additional per diem interest until the date of payment will accrue at \$101.9178.
16. Counsel anticipates additional work, including responding to the latest appeals filed by Ameriquest with the First Circuit Court of Appeals, and work associated with obtaining security for the Debtor to ensure payment of the amounts awarded, and to be awarded, by

this Court..

17. Defendant has failed and refused to make payment in whole or in part.

WHEREFORE, Plaintiff demands judgment against the Defendant for the sum of \$1,000, 000.00 plus interest upon said judgment as allowed by law, together with interest and costs of this action.

Jacalyn S. Nosek
by her attorney,

/s/ Philip M. Stone
Philip M. Stone, BBO # 544139
44 Front Street
Worcester, MA 01608
Tel. (508) 755-7354

Dated: July 27, 2007